

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

VICTOR MORRIS STERN,

Petitioner,

v.

EARL HOUSER, Superintendent,

Respondent.

Case No. 3:22-cv-00174-SLG-MMS

ORDER RE REPORT AND RECOMMENDATION

Before the Court at Docket 4 is Plaintiff Victor Stern's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person In State Custody ("Petition"). Respondent Houser responded with opposition at Docket 22 to which Petitioner Stern replied at Docket 23. Also before the Court at Docket 22 is Respondent's Motion to Dismiss and at Docket 27, Petitioner's Motion for Judgment on the Pleadings. No responses were filed to these motions. The Petition and Motions were referred to the Honorable Magistrate Judge Matthew M. Scoble. At Docket 34, Judge Scoble issued his Report and Recommendation, in which he recommended that the Petition at Docket 4 be dismissed with prejudice; that the Motion to Dismiss at Docket 22 be granted; that the Motion for Judgment on the Pleadings at Docket 27 be denied; and that the Clerk of Court be directed to close the case with each party to bear its own costs. Petitioner filed objections to the

Report and Recommendation at Docket 35 to which Respondent replied at Docket 36.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”¹ A court is to “make a *de novo* determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.”² However, § 636(b)(1) does not “require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”³

The Magistrate Judge recommended that the Court dismiss with prejudice the Petition at Docket 4; grant the Motion to Dismiss at Docket 22; deny the Motion for Judgment on the Pleadings at Docket 27; and direct the Clerk of Court to close the case with each party to bear its own costs. The Court has reviewed the parties’ filings and the Magistrate Judge’s Report and Recommendation.

Petitioner first objects that the Magistrate Judge attempted to improperly recharacterize Petitioner’s claims. On *de novo* review, the Court rejects this

¹ 28 U.S.C. § 636(b)(1).

² *Id.*

³ *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

objection. The Magistrate Judge carefully reviewed the record and explained how Petitioner's claims are untimely and procedurally defaulted.

Petitioner's second objection appears to assert that the Magistrate Judge improperly referenced the underlying murder conviction. This claim is without merit. This is a civil habeas proceeding in which Petitioner sought, among other relief, to be "immediately release[d] . . . from the judgment and sentence of case number: 3AN-88-08348CR."⁴

Petitioner's third objection is that the Magistrate Judge is prejudiced and biased. This objection is also without merit, as bias must be based upon something other than unfavorable rulings in the case. *Berger v. United States*, 255 U.S. 22, 31 (1921).

Petitioner's fourth objection relates to the dismissal of the petition on procedural grounds, and not relying solely on the Petition's allegations to proceed. But the Magistrate Judge correctly took judicial notice of the state court record in determining that the Petition was untimely and procedurally defaulted. *Woodford v. Ngo*, 548 U.S. 81, 92-93 (2006).

Petitioner's fifth objection is that Respondent has tacitly admitted that the judgment of conviction in the state murder case is void. This objection is without merit. Respondent has made no such admission. See Dockets 22, 36.

⁴ Docket 1 at 2.

The Court has reviewed the Report and Recommendation and agrees with its analysis. Accordingly, the Court adopts the Report and Recommendation, and IT IS ORDERED that the Petition at Docket 4 is DISMISSED with prejudice; Respondent's Motion to Dismiss at Docket 22 is GRANTED; and Petitioner's Motion for Judgment on the Pleadings at Docket 27 is DENIED. The Clerk of Court is directed to enter a final judgment and close the case. Each party shall bear its own costs. No certificate of appealability is issued by this Court; Petitioner may seek a certificate of appealability from the Ninth Circuit Court of Appeals.⁵

DATED this 30th day of September 2024, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

⁵ Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court finds that reasonable jurists would not disagree with this Court's resolution of Petitioner's claims; nor could reasonable jurists conclude that the issues presented are adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).